

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HORNBLOWER & WEEKS, INCORPORATED

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
~~Revision of a Determination~~ Refund
of Corporation Franchise
Taxes under Article (x) 9-A of the
Tax Law for the ~~Year(s) or Period(s)~~
Fiscal Year Ending September 30, 1970.

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Hornblower & Weeks,
Incorporated ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Hornblower & Weeks, Incorporated
8 Hanover Street
New York, New York 10004

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~of the~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

21st day of June, 1977.

Marsina Donnini

Not Public

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HORNBLOWER & WEEKS, INCORPORATED

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
~~xxx Revision of xxx Determination xxx~~ Refund
of Corporation Franchise
Taxes under Article (25) 9-A of the
Tax Law for the ~~Year(s) or Period(s)~~
Fiscal Year Ending September 30, 1970.

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of June, 1977, she served the within Notice of Decision by (certified) mail upon Gibney, Anthony & Ferguson (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gibney, Anthony & Ferguson
420 Lexington Avenue
New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

21st day of June, 1977.

Marsina Donnini

James J. [Signature]



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

June 21, 1977

TELEPHONE: (518) **457-1723**

✓
Hornblower & Weeks, Incorporated
8 Hanover Street
New York, New York 10004

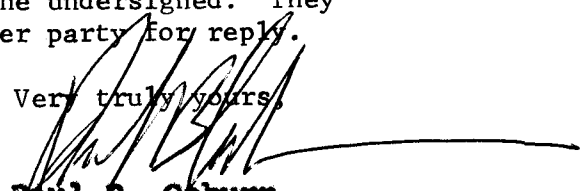
Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(2) **1090** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HORNBLOWER & WEEKS, INCORPORATED	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Corporation Franchise Tax	:	
under Article 9-A of the Tax Law for the	:	
Fiscal Year Ending September 30, 1970.	:	

Petitioner, Hornblower & Weeks, Incorporated, 8 Hanover Street, New York, New York 10004, filed a petition for re-determination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the taxable year from October 1, 1969 to September 30, 1970. (File No. 11675).

A formal hearing was scheduled before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1976 at 1:15 P.M. On November 12, 1976 the parties agreed in writing to submit the matter to the State Tax Commission upon the documents, correspondence and memoranda contained in the file, without the need for oral testimony.

The State Tax Commission renders the following decision after due consideration of the entire record.

ISSUE

Whether the petitioner, a New York corporation, had a regular place of business outside the State for purposes of allocation of entire net income, based on its leasing of personal property.

FINDINGS OF FACT

1. Petitioner, Hornblower & Weeks, Incorporated, filed a New York State corporate franchise report on June 15, 1971 for the fiscal year ended September 30, 1970, and paid tax for said period of \$1,545.00 predicated on an allocation percentage of 55.501% of total business capital. Petitioner employed only two factors in the computation, namely, tangible personal property owned by it and receipts from rentals of property.

2. On January 15, 1974, the Corporation Tax Bureau issued a Statement of Audit Adjustment to petitioner stating a deficiency of \$1,811.00 based on a tax at the rate of 1.25 mills on adjusted total capital. This computation did not allow for allocation in that the Bureau asserted that the only activity of the corporation outside New York was the leasing of tangible personal property, which activity does not permit allocation in the absence of a regular place of business outside the State. In accordance with the Statement of Audit Adjustment a Notice of Deficiency was issued on April 15, 1974.

3. Petitioner, Hornblower & Weeks, Incorporated, a New York corporation with offices at 8 Hanover Street, New York, New York, was incorporated in 1963. Petitioner owns and leases furniture, fixtures, equipment and leasehold improvements to Hornblower & Weeks - Hemphill, Noyes, a partnership, which is the sole shareholder of Hornblower & Weeks, Incorporated, pursuant to an Agreement of Lease dated February 7, 1969 between these two parties.

4. The personal property leased is located at offices of the partnership in ten different states and the District of Columbia. Petitioner paid either franchise or income taxes in some of these jurisdictions. The property leased was initially owned by the partnership and transferred for consideration to the corporate petitioner herein, which then leased the property to the partnership.

5. Petitioner, Hornblower & Weeks, Incorporated, has no offices outside the State of New York and has no full-time employees. It is the lessee which assumes the duties and obligation in connection with the use, maintenance and repair of the property, and is obligated to maintain records regarding the equipment rented, its rental value, and to provide insurance on the rented property.

CONCLUSIONS OF LAW

A. That the entire net income of a corporate taxpayer pursuant to Article 9-A of the Tax Law is to be allocated to New York by multiplying its business income by a business allocation percentage as provided in section 210 of the Tax Law. However, pursuant to subdivision 3, paragraph (a), subparagraph (4), the business allocation percentage of a corporate taxpayer which does not have a regular place of business outside New York other than a statutory office shall be 100 percent. (20 NYCRR 4.11a).

B. That the term "regular place of business" is defined in the regulations of the State Tax Commission, as published in 20 NYCRR 4.11b, which regulation was in effect and applicable to the fiscal year here in question and provided in pertinent part:

"A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer. . ."

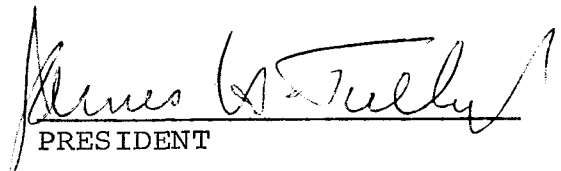
C. That the lease of personal property, utilized by the lessee outside New York, does not constitute the use of a regular place of business at the situs of the property by the lessor.

D. That "entire net income" is presumably the same as the taxable income of the corporation under the Internal Revenue Code, which taxable income, pursuant to section 164 thereof, can be reduced by deductions for state taxes paid or accrued for the taxable year; and that Article 9-A of the Tax Law provides no other exclusion, deduction or credit for taxes paid other states.


E. That the petition of Hornblower & Weeks, Incorporated, is denied and the Notice of Deficiency issued April 15, 1974 is sustained.

DATED: Albany, New York
June 21, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER